

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

JIM McFALL and wife, ELISHA HILL,

Plaintiffs,

v.

**STATE FARM INSURANCE
COMPANY, BRUCE JACOBS,
Individually and in his agency
Capacity,**

Docket No._____

Judge:_____

Jury Demanded

Defendants.

NOTICE OF REMOVAL

State Farm Fire and Casualty Company, improperly named as State Farm Insurance Company, hereby notifies the Judges of the United States District Court for the Western District of Tennessee, the clerk of the Circuit Court of Hardin County, Tennessee, Jim McFall and Elisha Hill, that the action described herein and filed in the Circuit Court of Hardin County, Tennessee, is removed to the United States District Court for the Western District of Tennessee, Eastern Division pursuant to 28 U.S.C. ' 1441.

On May 12, 2011, Plaintiffs Jim McFall and Elisha Hill, filed a civil action bearing docket number 4423 against Defendants Bruce Jacobs and State Farm Fire and Casualty Company, improperly named as State Farm Insurance Company (hereinafter "State Farm"), respectively in the Circuit Court of Hardin County, Tennessee. Service of the Complaint and Summons was made upon Defendant State Farm by letter dated May 27, 2011 by delivery of the Summons together with a copy of the Complaint to Defendant's agent through the Commissioner of Insurance. This action is filed by Plaintiffs for proceeds

allegedly due under a contract of insurance written by Defendant State Farm insuring Plaintiffs' residence and contents in Hardin County, Tennessee, which property was allegedly destroyed by fire occurring on or about January 3, 2010.

Petitioner seeks removal of this action to this court upon the grounds that the controversy is wholly between citizens of different states and involves an amount in controversy which exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of the interest and costs. See 28 U.S.C. ' 1332. Specifically, the Complaint alleges that the house and contents were destroyed by fire and that Plaintiff should be awarded a judgment against Defendants in the amount of \$50,000.00 plus an additional \$12,500.00 under the Tennessee Bad-faith Penalty Statute codified at Tennessee Code Annotated § 56-7-105, plus attorneys' fees and treble/punitive damages under the Tennessee Consumer Protection Act codified at Tennessee Code Annotated § 47-18-101 et seq. The amount in controversy exceeds \$75,000.00 where the compensatory damages sought of \$50,000.00 carries the potential of treble damages, making the amount in controversy in excess of \$150,000.00. Punitive damages are properly considered part of the amount in controversy for removal purposes.

The Great Tenn. Pizza Co., Inc. v. Bellsouth Telecomm., Inc., 2011 WL 1636234, * 8 (E.D. Tenn. April 29, 2011).

Plaintiffs are residents and citizens of the State of Tennessee and were residents and citizens of the State of Tennessee at the time of the filing of this action and at the time of removal. Defendant Bruce Jacobs, was a citizen and resident of the State of Tennessee at the time of the filing of this action and at the time of removal. However, for reasons, stated hereinafter and in the Motion to Dismiss filed contemporaneously herewith, which pleadings are incorporated herein by reference, the residence of Defendant Bruce Jacobs

does not defeat diversity jurisdiction in this action. Specifically, under the doctrine of fraudulent joinder, Defendant Jacobs should be dismissed from this action as no claims are asserted against him for which Plaintiffs can recover. Defendant State Farm Fire and Casualty Company, is a corporation incorporated in Connecticut, with its principal place of business in Bloomington, Illinois, McLean County. Defendant State Farm Fire and Casualty Company was at the time of the filing of this action and at the time of removal a citizen of a state other than Tennessee and therefore diversity of citizenship exists between all parties.

The amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and cost. This notice is filed within the time prescribed by 28 U.S.C. ' 1446(b). A copy of the Summons and Complaint, being all the papers served upon Defendant, are attached hereto. Wherefore, notice is hereby given that the said civil action number 4423 is removed from the Circuit Court of Hardin County, Tennessee, to this Court.

Further, Defendants, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, move the court for an Order dismissing from this action Defendant Bruce Jacobs, for any claim based upon the alleged breach of the insurance contract with Defendant State Farm Fire and Casualty Company.

Respectfully submitted,

RAINEY, KIZER, REVIERE & BELL, P.L.C.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this pleading or document was served upon counsel Plaintiff:

W. Justin Reynolds (028032)
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by electronic service or by mailing postage prepaid or by delivery to the person or office of such counsel.

This the 9th day of June, 2011.

s/Russell E. Reviere